

WASHINGTON STATE HUMAN RIGHTS COMMISSION

GUIDE TO SEXUAL ORIENTATION, GENDER IDENTITY, DISCRIMINATION, and WASHINGTON STATE LAWS

SELF-ASSESSMENT CHECKLIST FOR COMPLIANCE and SUGGESTED BEST PRACTICES FOR EMPLOYMENT



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The *Self-Assessment Checklist for Compliance and Suggested Best Practices, Second Edition* is a practical tool for businesses, employers, and other covered entities. By following this Guide and developing and implementing appropriate policies and procedures, you can help prevent confusion and discrimination in the workplace, foster an inclusive environment and limit the likelihood that a discrimination complaint is filed against you.

This Guide is not intended to take the place of professional legal advice. Neither the State of Washington nor any agency shall be held liable for any losses caused by reliance on the accuracy, reliability or timeliness of such information.

The Guide is divided into two sections: policies and actions required for compliance, and policies and actions suggested for compliance.

Note: This Guide is specific to employers, business owners, human resource managers, and other entities who want concrete information about how to comply with the law. Where “Company” is referred to, we mean all covered entities that employ eight or more people in the State of Washington.

Note: This is an interim interpretive statement and a work in progress. Please let us know about your experience using this instrument, and any suggestions for improvement. For further information and to provide feedback and suggestions, please contact Seth Kirby, Program Specialist, at 1-800-322-3247.

Name of Company or Business:

Person/Title Completing Evaluation

Date / /

Directions: Please complete this form by checking either Yes or No. Responses should be based on supporting documentation that your company or business keeps on file.

SECTION 1: CHECKLIST FOR COMPLIANCE

Note: Where applicable, the policies and actions are required for compliance.

HIRING and RECRUITMENT

1. Our company lists sexual orientation and gender expression/identity*, as part of our non-discrimination policy.

*Note: "Sexual orientation means heterosexuality, homosexuality, bisexuality, and gender expression or identity. Gender expression or identity means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth." RCW 49.60.040(15).

☐ Yes ☐ No ACTION TAKEN

2. Our company engages in employment practices (e.g. hiring, promotion, assignment, training, etc.) that eliminate discrimination on the basis of all protected classes, including sexual orientation and gender expression/identity.

☐ Yes ☐ No ACTION TAKEN

3. Our company includes sexual orientation and gender expression/identity and as part of our non-discrimination policy when publicizing information about our company, including in languages other than English.

☐ Yes ☐ No ACTION TAKEN

4. Our company has reviewed our standard employment interview questions and application forms and removed any biased questions, as well as questions that might be used in a discriminatory way (e.g. "lifestyle" questions).

☐ Yes ☐ No ACTION TAKEN

EMPLOYEE EDUCATION

1. Have all current employees been made aware of the new protections of the law?

☐ Yes

☐ No

ACTION TAKEN

If Yes, how have employees been made aware:

Announcement in Company Newsletter

Announcement Posting

Announcement in Staff Meeting

Employee Training

Other - Please list:

2. Our company has a published internal grievance procedure providing for prompt and equitable resolution of employee complaints alleging discrimination based on sexual orientation or gender expression/identity.

☐ Yes

☐ No

ACTION TAKEN

HUMAN RESOURCES

1. Our company's human resources department has updated policies and procedures for investigating and resolving complaints of discrimination based on someone's real or perceived sexual orientation, or gender expression/identity.

☐ Yes

☐ No

ACTION TAKEN

2. Our company provides education or training for managers and supervisors including an overview of our non-discrimination policy covering sexual orientation and gender expression/identity.

☐ Yes

☐ No

ACTION TAKEN

Date of Last Training: / / Date of Next Training: / /

3. Our human resources department has a standard procedure allowing for employees to use a preferred name on company email, documents, voice mail, name tags, etc.

☐ Yes

☐ No

ACTION TAKEN

4. Our human resources department has a standard procedure employees can use to change their legal names on employment-related documents, regardless of the reason.

☐ Yes

☐ No

ACTION TAKEN

5. Our human resources department has policies in place that protect the confidentiality of employees who are transitioning* or who have transitioned (e.g. the human resources department will not disclose confidential information about an individual's transgender status including former name, legal gender, or medical status).

*Note: "Transition" refers to the social and/ or medical process a transgender person undergoes to assert his or her gender identity. The transition process can include changing one's name, changing one's preferred pronoun, taking hormones, or having gender reassignment surgery.

☐Yes ☐No ACTION TAKEN

6. Our company is aware that a transgender employee may have a legal name and/or legal gender designation that is not consistent with the employee's gender expression/identity. Our company will not consider a transgender employee to be acting in a fraudulent manner if he or she discloses this conflicting information.

☐Yes ☐No ACTION TAKEN

COMPARABLE COMPENSATION, TERMS, AND CONDITIONS

Note: Compensation, terms, and conditions must be provided equally regardless of one's sexual orientation or gender expression/identity. In addition, unmarried couples (both heterosexual and gay or lesbian) must be equally provided benefits (e.g. a company would not be in compliance to offer child care benefits to unmarried opposite-sex couples, but not offer the same benefit to unmarried same-sex couples).

Additionally, RCW 49.60.020 states that the statute cannot "be construed to modify or supersede state law relating to marriage." In addition, there are several federal laws that may preempt the Washington Law Against Discrimination. Many of the preemptions come from the Employee Retirement Income Security Act (ERISA) of 1974, the Internal Revenue Service, and the Family and Medical Leave Act (FMLA). In certain circumstances, ERISA allows for an employer to offer benefits to married couples, but not to unmarried couples. FMLA allows an employee to take leave to care for their married spouse, but not for a domestic partner. Finally, the IRS requires employers to report domestic partner benefits as income, making the benefit taxable under federal law.

7. Our company offers domestic partner benefits equally to unmarried same-sex and opposite-sex domestic partners. Note: Some entities may not be able to implement this policy immediately.

☐Yes ☐No ACTION TAKEN

8. Our company offers family-leave benefits equally to unmarried same-sex and opposite-sex domestic partners.

☐Yes ☐No ACTION TAKEN

9. Our company policies permit employees to comply with dress codes in an appropriate manner that is consistent with their gender expression/identity. These dress codes do not unduly burden one employees of one sex, or employees who are transitioning (e.g. if women are allowed to wear pants or jeans to work, transgender women should also be allowed to wear pants or jeans).

☐Yes ☐No ACTION TAKEN

10. Our company offers child care benefits equally to unmarried same-sex and opposite-sex domestic partners with children.

☐Yes ☐No ACTION TAKEN

11. Our company offers discounts (such as auto insurance) and facilities (such as a gym) benefits equally to unmarried same-sex and opposite-sex domestic partners.

☐Yes ☐No ACTION TAKEN

12. Our company equally pays for the relocation or travel expenses of unmarried same-sex and opposite-sex domestic partners.

☐Yes ☐No ACTION TAKEN

13. Our company policies and culture equally allows for the display of photos, delivery of flowers, and visits from all couples, including married spouses and unmarried partners.

☐Yes ☐No ACTION TAKEN

14. Our company policy allows for transgender employee to use the restroom and locker room matching the gender he or she publicly asserts.

☐Yes ☐No ACTION TAKEN

15. Our company policies allow for a transgender person to take medical leave in the same manner as other employees needing medical leave. For example, if an employer does not provide sick leave, the employer should provide leave without pay to transgender employees in the same manner that leave is provided to employees seeking other types of medical care.

☐Yes ☐No ACTION TAKEN

16. Our company policies equally provide services to all customers or clients regardless of real or perceived sexual orientation or gender expression/identity.

☐Yes ☐No ACTION TAKEN

17. Our company policies and actions equally allow for the promotion and compensation of employees regardless of one's sexual orientation or gender expression/identity.

☐Yes ☐No ACTION TAKEN

18. Our company does not take sexual orientation or gender identity into account when determining a reduction in hours, lay-off, or termination of employment.

☐Yes ☐No ACTION TAKEN

19. Our company equally extends (or does not extend) health insurance benefits unmarried same-sex and opposite-sex domestic partners.

☐Yes ☐No ACTION TAKEN

20. Our company equally allows for the creation of and membership in company sponsored affinity groups, including groups related to GLBT issues.

☐Yes ☐No ACTION TAKEN

21. Our company equally provides adoption and parenting benefits to all employees, regardless of sexual orientation.

☐Yes ☐No ACTION TAKEN

22. Our company has a policy to avoid the creation of a hostile work environment, including harassment based on sexual orientation and gender expression/identity.

☐Yes ☐No ACTION TAKEN

23. Our company solicited feedback from GLBT employees and incorporated their ideas into our implementation plan.

☐Yes ☐No ACTION TAKEN

SECTION 2: CHECKLIST FOR SUGGESTED BEST PRACTICES

Note: Companies have the opportunity to go beyond strict compliance. Doing so can help create a diverse, open work environment, limit claims of discrimination, and foster good relations with employees and the community. The policies and actions below are recommended for compliance.

WORKPLACE DIVERSITY

1. Our company has adopted a diversity program or plan that includes gay, lesbian, bisexual, and transgender (GLBT) people.
☐Yes ☐No ACTION TAKEN

2. Our company routinely disseminates information regarding our nondiscrimination policies.
☐Yes ☐No ACTION TAKEN

3. Our company's policies and culture reflect an open, welcoming environment and organizational culture.
☐Yes ☐No ACTION TAKEN

4. Our company's policies and culture are such that the company respects the differences in beliefs, cultures, and sexual orientation.
☐Yes ☐No ACTION TAKEN

5. Our Employee Assistance Program is prepared to assist our GLBT employees as well as our employees who are friends and family members of GLBT people.
☐Yes ☐No ACTION TAKEN

6. Our company has an alternative dispute resolution model in place should employees need to resolve a workplace dispute, including disputes regarding GLBT issues.
☐Yes ☐No ACTION TAKEN

7. Our company's mediator(s) are sensitive to the needs and concerns of GLBT people and families in the workplace.
☐Yes ☐No ACTION TAKEN

[illegible]

PRACTICE CHANGES

1. Our company provided updated staff diversity training to upper level management, including an overview of our company policies and procedures with respect to non-discrimination based on sexual orientation and gender expression/identity.

☐Yes ☐No ACTION TAKEN

2. Our company provided updated staff diversity training to all employees and volunteers, including an overview of our company policies and procedures with respect to non-discrimination based on sexual orientation and gender expression/identity.

☐Yes ☐No ACTION TAKEN

3. Our company provided updated staff with a revised policy and procedure manual, including information about our policies regarding non-discrimination based on sexual orientation and gender expression/identity.

☐Yes ☐No ACTION TAKEN

4. Our company developed a timetable with milestones to address or revise our Company's non-discrimination policy, including non-discrimination based on sexual orientation and gender expression/identity.

☐Yes ☐No ACTION TAKEN

MONITOR INTERNAL COMPLIANCE

1. Our company tracks complaints of discrimination.

☐Yes ☐No ACTION TAKEN

2. Our company handles all complaints of discrimination promptly and fairly.

☐Yes ☐No ACTION TAKEN

3. Our company monitors implementation of the action plan.

☐Yes ☐No ACTION TAKEN

4. Our company has explicit policies that allow employees to make complaints without fear of retaliation. In addition, the employee can go outside his or her chain of command to make complaints in order to feel more secure.

☐Yes ☐No ACTION TAKEN

EVALUATE SUCCESS

1. Our employees, from senior management to new hires, are made aware of and agree to adhere to our non-discrimination policy that includes sexual orientation and gender expression/identity.

☐Yes☐No

ACTION TAKEN

2. Since implementing this plan, our company feels better able to handle any challenges, claims or discrimination, or concerns regarding the sexual orientation or gender expression/identity of our employees, volunteers, and clients.

☐Yes☐No

ACTION TAKEN

3. Our company has received few internal complaints of discrimination based on sexual orientation and gender expression/identity.

☐Yes☐No

ACTION TAKEN

4. When complaints arise, employees have several avenues of redress, including accessing support through the Employee Assistance Program.

☐Yes☐No

ACTION TAKEN

END